92-826

NO.

Supreme Court, U.S.
FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

LONNIE D. SNELLING,

PETITIONER.

V.

THOMAS A. WESTHOFF,
DAVID K. DOWLING,
CHARLES EDWARD COBB,
LESTER EUGENE SMITH,
CARL PORTER AND
JAMES P. CALLOWAY,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

LONNIE D. SNELLING
1518-79th Street
U. City, Mo. 63130
(314) 862-8279
Appellant- Pro se

QUESTIONS PRESENTED FOR REVIEW

(1) Whether the Eight Circuit Court of Appeals err, when it found no claim stated under 42 U.S.C.A. § 1983 or § 1985(2)(a)(c), in Appellant's Complaint.

(2) Whether the District Court err, when it found that the actions of defendants, violated no established right of appellant.

(3) Whether the Eight Circuit Court of Appeals err, when it granted defendants Smith and Porter, witness immunity in conflick with Mo. R.S. 1986, § 545.340, and Constitutional Amendment 5 and 14.

(4) Whether the District Court and the Eighth Circuit Court of Appeals err, by labeling appellant's complaint as that of a challenge of his criminal case thereby, granting all Defendants' witness immunity.

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No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

LONNIE D. SNELLING,

PETITIONER.

V.

THOMAS A. WESTHOFF,
DAVID K. DOWLING,
CHARLES EDWARD COBB,
LESTER EUGENE SMITH,
CARL PORTER AND,
JAMES P. CALLOWAY,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Lonnie D. Snelling, Pro se, prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Eighth Circuit in this matter.

Upholding the District Court's decision granting summary judgment to all defendants on the grounds of prosecutorial and witness immunity and failing to set forth a cause of action pursuant to § 1983, 1985(2)(a)(c) and 1986. Constitutional Amendment 1st,5th,8th and 14th.

OPINIONS BELOW

The opinion of the Court of Appeals is reported as Snelling v. Westhoff, 972 F. 2d 199 (8th Cir. 1992), and appears in Appendix A-2 to this Petition.

The unpublished opinion of the District Court for the Eastern District of Missouri appears in Appendix A-8 to this Petition

Petition for rehearing with suggestion for rehearing en banc filed August 14, 1992 Denial of the Court of Appeals for the Eighth Circuit of the Petition for Rehearing (Issued September 9, 1992) appears in Appendix A-24 to this Petition.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on August 3, 1992, Appendix A-2. A timely Petition for Rehearing was filed on August 14, 1992, The Court of Appeals' denial of the Petition for Rehearing was issued September 9, 1992 and is set forth in Appendix A-24.

This Court's Jurisdiction is invoked under Title 28 U.S.C. § 1254(1).
U.S. District Court's Jurisdiction was invoked pursuant to 28 U.S.C. § 1331.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Amendments 1,5,8, and 14 is set forth in Appendix A-25. and A-26
Statutory Provisions Title 42 U.S.C.A. § 1983, 1985(2) and 1986 is set forth in Appendix A-27, A-28 and A-29.
Mo. R.S. 1986, § 545.340 Appendix A-31

STATEMENT OF CASE

This Complaint was first filed in State court labeled as a counted-claim against defendants Westhoff, Cobb and Calloway. The State trial Judge refused the Petition within the criminal complaint on the grounds that it were against rules.

On October 9, 1990, a complaint was filed in U.S. District Court for the Eastern District of Missouri. Against Defendants Thomas A. Westhoff, David K. Dowling, Charles Edward Cobb, Lester Eugene Smith, Carl Porter, James P. Calloway and John Doe.

On October 18, 1990, an amendment to the complaint was filed before any responsive pleadings from any defendant. All defendants, Westhoff, Dowling, Cobb, Smith, Porter and Calloway was renamed in the amended complaint. The John Doe defendant was stricken by appellant.

On October 22, 1990, and thereafter each defendant through counsel, filed a motion to dismiss or a more definite statement. On Nov. 14, 1990, this case was placed on the reassignment docket because of new Judge addition, no order on motions. Appellant filed interrogatories on March 5, 1991 and on March 25, 1991, the District Court Judge Jean C. Hamilton, converted the motions to dismiss to Motions for Summary Judgment, dismissing appellant's complaint against all defendants. The grounds used by the trial Court for its actions, Witness Immunity to defendants, Westhoff, Cobb and Calloway. Prosecutorial Immunity for Defendant Dowling, The Court didn't rule on the State Law Tort against Smith and Porter.

That decision was appealed to the Court of Appeals for the Eighth Circuit which upheld the District Court's ruling, and granted Smith and Porter Witness Immunity.

A Petition for Rehearing was timely filed on August 14, 1992 and denied on September 9, 1992.

Thereafter, this Petition for a Writ of Certiorari was timely filed.

REASON FOR GRANTING THE WRIT

Certiorari should be granted for Three reasons:(1) The Opinion of the Lower Courts' conflicts with this Courts' ruling on granting a motion for summary judgment. Bowers v. Hardwick, 106 S. Ct. at 2849(1986), The appellate Court's opinion conflicts with Bramlet v. Wilson, 495 F. 2d 714 (8th Cir.1974), also Conley v. Gibson, 78 S. Ct. 99, 101 (1957). (2) The Opinion of the Lower Courts' conflicts with this Court, on the requirment to state a cause of action under 42 U.S.C.A. § 1985(2)(a)(c), See Kimble v. D.J. McDuffy, 648 F. 2d 340, also Griffin v. Breckenridge, 91 S. Ct. 1797-98. (3) The Opinion of the Lower Courts' that

appellant's complaint, is a challege to the criminal conviction is mis-placed and a distortion of the complaint and its claims that is before this Court.

See. Bowers v. Hardwick, 106 S. Ct. at 2849 (1986).

ARGUMENT

The Lower Courts' ruling conflicts with this Courts' Rulings on the granting of summary judgment and dismissal of a complaint for failure to state a claim. See Adickes v. S.H. Kress & Co., 90 S.Ct. 1598 (1970), and its own opinion in Palmer v. Tracor, Inc. 856 F. 2d at 1133(2) (8th Cir.1988).

The grounds that were used, Witness and Prosecutorial Immunity to grant summary judgment or to dismiss complaint as applied, is mis-placed.

The complaint is not based on testimony given at the criminal trial by either defendant or the action by the prosecutor therein.

The lower Courts' obsessive focus on witness and prosecutorial immunity, could be attributed to the defendants' submissom of the criminal trial docket sheet, which in all prætical purposes would dictate a affrimative defense of collateral estoppel.

The appellate Court cited Briscoe V.LaHue, 460 U.S. 325, 329-46(1983), to support its opinion for witness immunity.

Even if defendants were immune from liability under § 1983 and 1985(2)(a)(c) and 1986, for their actions at appellant's criminal trial.

None of the claims within appellant's complaint, stated that the actions at the criminal trial by defendants', were being complained off. See Harper v. Merckle, 638 F. 2d 848(1981)[1]

[1] "Non-Judicial acts, are not cloaked with judicial immunity for suit under § 1983."

Appellant's § 1983 action, was that against officials abuse and intentional abuse of governmental authority and adopted by the Attorney General of Missouri. See City of Canton, Ohio v. Harris, 109 S.Ct. 1197. and DeLoach v. Bevers, 922 F. 2d at 621(3) (10th Cir. 1990).

The lower Courts' opinion conflicts with its ruling in El Fundi v. Deroche, 625 F.2d 195, 196(8th Cir. 1980) See also Murray v. Wal-Mart,Inc., 874 F. 2d at 558(3) (8th Cir. 1989). On private persons acting under color of State law, when the private party is a willfully participant.

The District Court and the Court of Appeals cited, Imbler v. Pachtman, 424 U.S. 409(1976). as its authority relied on for granting Defendant Dowling, absolute immunity as the prosecutor in the criminal case.

Appellant does not dispute the case law cited by the lower courts', when applied to a challenge of a State criminal case but, this case law is inapplicable to the complaint before this Court.

The questions before this Court and were before the lower Courts, is whether the prosecuting attorney David K. Dowling and Charles Cobb violated appellant's Fifth and Fourteenth Amendment Right to Due Process and Equal protection under the Laws.

When Cobb, recanted his entire statements made under oath on May 29, 1990, and confessed to Dowling, that all were Fabrications and Dowling failed to inform appellant of the recantation but, used some of the recanted statements at trial. See Mooney v. Holohan, 55 S.Ct. 340, Hilliardv. Williams, 516 F. 2d at 1350(4-5)(1975),See also Brady v. Maryland, 83 S.Ct. 1194. (1963).

Whether the above action of defendant Dowling, fit within the scope of his duties as applied under Imbler, U.S. 424 at 421, or whether defendant Dowling action fit better within the ruling of Imbler, U.S. 424 at 431. The Second Circuit, as well as the Ninth Circuit have ruled on similar cases, with differ results than those opinions now before this Court, See.Barbera v. Smith, 836 F. 2d 96, 100 (2d Cir. 1987). Which grant prosecutors no immunity for this type of action. also see Gobel v. Maricopa County, 867 F. 2d 1201, 1204(9th Cir. 1989).

Within this same conduct, appellant cites a conspiracy among the defendants, Westhoff, Dowling, Cobb, Smith, Porter and Calloway. To deny appellant of a fair trial and to purnish appellant for filing his complaint and asking for a jury trial.

Events cited within the complaint on

appeal, (1) Calloway's deposition taken on April 6, 1989, at which time he admits that he did not sign a complaint for trespassing against Snelling(Appellant) until after Nov. 18, 1988 and that the complaint was brough to his house by the conservation agent. The landowner's complaint of Calloway, was withdrawn on June 4, 1990. Submitted against Westhoff, See, United States v. Raymond, 793 F. 2d at 930(8th Cir. 1986). (2) Charles Cobb, on May 29, 1990, during his deposition, gave a complete rendition of what he had seen appellant do on Nov. 18, 1988, with drawing. On the same day, after appellant had left and the deposition was over, Defendants Cobb and Dowling got together and the statements were recanted, Unknown to appellant until June 14, 1990 at the criminal trial. Because appellant relied on the false statements made at the deposition, to be the prosecutor's case

against him, all efforts was set toward these false statements by Cobb. At the criminal trial, Cobb on cross-examination by Appellant(then defendant) stated that he had made a mistake at the deposition. The deposition was submitted to the State Courts, See Myers v. Bull, 599 F. 2d at 866(5) (8th Cir. 1979).

(3) Defendant Westhoff initiated the criminal charge against appellant on Nov. 18, 1988, without a owner complaint. There were racial overtone present and Westhoff later got Calloway to sign a complaint of trespass against appellant. See Mulligan v. Schlachter, 389 F. 2d 231 (6th Cir. 1968).

(4) Defendant Smith and Porter was subpeona to appear on behalf of appellant and failed to so appear. Thereby denying appellant of his right to present defense witnesses, See Washington v. Texas, 87 S. Ct. 1920 (1967).

Appellant in his complaint, stated that the absent of defendant Smith and Porter, was directed by Dowling, to deny appellant of their present and testimony. The fact that both failed to appear, without an opportunity to conduct discovery, the lower Courts could not say for absolute, that appellant could prove no set of facts that would entitle him to relief. Umpleby v. United States, 806 F. 2d at 814 (8th Cir. 1988). Also was a violation of appellant's Fifth and Sixth Amendment rights to present witnesses in one's defense and right to compulsory process, See United States v.Valenzuela-Bernal, 102 S. Ct. 3440 (1982). Defendants does not dispute that at the time of their actions, the existence of clearly established laws, (a) Prohibiting the use of known false testimony in the pursuit of a criminal conviction and (b) Prohibiting threats and intimi-

dation of a prospective defense witness.

Appellant's conspiracy complaint set forth the actions complained of and the persons responsible for the deprivation of the rights denied. That the actors was State and private, with the same goal, to run a african-american from the county by the use of State power to prosecute. The lower Court's opinion conflicts with its decision in Lewis v.Pearson Foundation, Inc, 908 F. 2d 318 (8th Cir. 1990). and this Court's opinion in Griffin v. Breckenridge, 91 S. Ct. at 1798. [3]

[3] "In order to be actionable under 42 U.S.C.A. Section 1985(3), a conspiracy mustaim at a deprivation of equal enjoyment of rights secured by the law to all"

Jones v. United States, 536 F. 2d 269 271 (CA8 1976).

Appellant made a sufficient allegation of racial discriminatory animus behind defendants actions toward appellant.

Appellant expressly invoked his rights pursuant to the Constitutional Amendments 1st,5th,8th and 14th.

The question before this Court is whether appellant had established rights under the above Constitutional Amendments at the time of defendants actions and whether any right were violated by either defendant, seperate or jointly.

At the time of defendants actions, cases clearly held that certain types of governmental interference can deprive a defendant of his right to present defense witnesses, Webb v. Texas, 93 S. Ct. 351 (1972), Known use of coerced or prejured testimony is a violation of Constitutional rights, See Pyle v. State of Kansas, 63 S. Ct. 178, (1942). Whether non disclosure

of material evidence is by negligence or design, failure to disclose is responsibility of prosecutor, See Giglio v. United States, 92 S. Ct. 763 (1972)

Whether the appellate Court's opinion to grant defendant Smith and Porter, witness immunity, is a conflict with Mo. R.S. 1986, Section 545.340, Constitutional Amendment 5th and 14th and 42 U.S.C.A. § 1985(3).

In Missouri, a person that is subpeona to appear on behalf of another and fail to so appear. are liable to the party on which behalf the offending party were to appear, under a State Law Tort, See Connett v.Hamilton, 16 Mo. 442. Also Mo. R.S. 1986, Section 545.340.

Appellant's complaint consist of mixed questions of fact and law, thereby a jury question exist, See Whitley v. Albers, 106 S. Ct. 1078, 1091 (1986).

Appellant's complaint concerning the actions of Defendant Westhoff on November 18, 1988. were that Westhoff detained appellant, took appellant's identification(Driver License) and retained same for more than Forty-Five Minutes as he(Westhoff) wrote appellant a trespassing summons. It is this complaintant's ideal, that he were in custody at that point. Because appellant had been taken into custody by defendant Westhoff and interrogated about his(Appellant's) present in Montgomery County. Defendant Westhoff, violated appellant's First Amendment rights(Freedom of Speech and Association), by denying appellant the opportunity to consult with a attorney and appellant's Fifth Amendment right (self incrimination). Defendant failed to read appellant his Miranda rights. See Escobedo v.Illinois, 378 U.S. 478. Defendant Westhoff, later repeated some of those alleged statements.

This Court have granted Certiorari on a limited basis to consider the lower courts ruling on § 1985(2) conspiracy complaints. This case contain such a complaint, appellant cited a conspiracy between defenfents Westhoff and Calloway. Concerning the landowner's complaint, this complaint was withdrawn on June 4, 1990, more than One(1½) and One half year later and more than a year, after all defendants knew that the complaint was false. The other conspiracy complaint was against defendants Smith and Porter, with Dowling. And another conspiracy complaint with the defendants consisting of Westhoff, Cobb, Dowling and Calloway. Each of these complaints of conspiracy occurred at different times during the course of the actions by defendants. The Lower Courts grouped the entire complaint into One (1) action and not the Three(3) as stated within the pleadings.

CONCLUSION

For the reasons set forth above, a
it of Certiorari should issue to review
ıe Judgment and Opinion of the Court of
)peals in this Matter. [4]

ıted: October 27, 1992

RESPECTFULLY SUBMITTED BY,

LONNIE D. SNELLING
1518-79th Street
U. City, Mo. 63130
(314) 862-8279
Appellant- Pro se

[4] If this Court elects not to address
he issues presented in this Writ at the
resent time , it is requested that the
rit issue and that the matter be remanded
o the Court of Appeals for redetermination
onsistence with this Court's opinion in
owers v. Hardwick, 106 S.Ct. at 2849(1986).
nd Griffin v. Breckenridge, 91 S.Ct. 1790.

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APPENDIX

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Mo. R.S. 1986, § 545.340 A-31

UNITED STATES COURT OF APPEALS

For the Eighth Circuit

Nos. 92-1067/92-1208

LONNIE D. SNELLING,

Appellant/Cross-Appellee.

v.

Thomas A. Westhoff;David K. Dowling; Charles Edward Cobb; Lester Eugene Smith; Carl Porter; James P. Calloway,

Appellee/Cross-
Appallant.

LONNIE D. SNELLING,

Appellee/Cross-
Appallant.

v.

Thomas A. Westhoff;

Appellant/Cross-Appellee.

David K. Dowling; Charles Edward Cobb; Lester Eugene Smith; Carl Porter; James P. Calloway,

Defendants.

Submitted: July 20, 1992
Filed: August 3, 1992

Fagg, Bowman, and Woolman, Circuit Judges.

Lonnie D. Snelling appeals the District Court's[1] Judgment in favor of defendants in Snelling's civil rights action. Thomas A. Westhoff appeals the District Court's order denying his motion for sanction under Federal Rule of Civil Procedure 11. We affirm.

After Snelling was convicted of second-degree trespass in State Court, He alledged that Westhoff, A State Conservation Agent, violated his First, Fifth, and Fourteenth Amendment Rights by unlawfully detaining him and issuing a trespass summons to him because he is black; Westhoff and James Calloway, a private landowner who signed the trespass complaint, conspired to deprive him of his constitutional rights by agreeing to use a false trespass complaint against him; Westhoff and Charles Cobb, a witness in the State's case, conspired with David

Dowling, a prosecuting attorney, by agreeing to give false testimony at his trial; and Lester Smith and Carl Porter, witness in the State's case, conspired with Dowling by agreeing to disobey subpeonas. The District Court granted summary judgment in favor of defendants, denied snelling's motion to alter or amend judgment, and denied westhoff's motion for sanctions.

We conclude that the district Court properly dismissed the conspiracy claims against Dowling on the ground of absolute prosecutorial immunity. See Imbler v. Pachtman, 424 U.S. 409, 431-32(1976) (prosecuting attorney who acts within the scope of his duties in initiating criminal prosecution and presenting State's case is absolutely immune from Section 1983 suit for damages); White v.Bloom, 621 F. 2d 276, 280 (8th Cir.) (same holding in suit brought

under section 1983 and 1985), cert denied, 449 U.S. 995(1980), and cert denied, 449 U.S. 1089(1981); See also Myers v. Morris, 810 F. 2d 1437, 1446 (8th Cir.)(allegations that prosecutor presented false testimony or withheld evidence do not defeat immunity) cert. denied, 484 U.S. 828 (1987). The District Court also properly dismissed the conspiracy claim against Westhoff, Calloway, Cobb, Smith, and Porter on grounds of absolute witness immunity. See Conley v. office of pub. Defender, 653 F. 2d 1241, 1242 (8th Cir. 1981) (witness are absolutely immune from section 1983 suit arising from their testimony in judicial proceedings); House v. Belford, 956 F. 2d 711, 720-21 (7th Cir. 1992) (per curiam) (same holding

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[1]The Honorable Jean C. Hamilton, UnitedStates District Judge for the Eastern District of Missouri.

in suit alleging conspiracy between witness and porosecutor to give false testimony). See Brisco v. LaHue 460 U.S. 325, 329-46 (1983) (convicted State defendant may not assert section 1983 claim for damages against police office or other government official for giving perjured testimony at defendant's criminal trial).

Even if defendants were not absolutely immune from liabity for the alledged conspiracies, we conclude that Snelling's conspiracy allegations were conclusory and failed to state a claim. See Rogers V. Bruntrager, 841 F. 2d 853, 856 (8th Cir. 1988) (conspiracy claim requires allegations of specific facts showing "meeting of Minds" among alledged conspirators). we also conclude the District Court properly dismissed the section 1983 claims against Westhoff, because Snelling failed to alledge facts indicating that his First, Fifth,

and Fourteenth Amendment rights were violated.

We find no merit in Snelling's argument that the District Court erred in dismissing his complaint without giving him an opportunity to cure the deficiencies in an amended complaint. We finally conclude that the District Court did not abuse its discretion in denying Westhoff's motion for sanctions. See Bryant v.Brooklyn Barbecue Corp. 932 F. 2d 697, 699 (8th Cir.) (District Court's Rule 11 sanction order reviewed under abuse of discretion standard), cert. denied, 112 S. Ct. 638 (1991).

Accordingly, we affirm.

A true copy,

attest:

Clerk, U.S. Court of Appeals, Eighth Circuit.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LONNIE D. SNELLING,)

Plaintiff,)

v.) No. 90-9108-C7

Thomas A. Westhoff, et al.,)

Defendants)

MEMORANDUM AND ORDER

This matter is before the Court on the motion of Defendants Thomas Westhoff; David Dowling; Charles Cobb; Lester Smith; Carl Porter; and James Calloway to dismiss Plaintiff Lonnie Snelling's "First Amended Petition." Several defendants attached exhibits to their motion to dismiss. These motion will be treated as motions for summary judgment pursuant to Rule 12(b) of the Federal Rules pof Civil Procedure.

This Court may grant a motion for summary judgment if "The pleadings, depo-

sitions, answers to interrogatories, and admissioms on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The substantive law determines which facts are critical and whcih are irrelevant. Only disputes over facts that might affect the outcome will properly preclude summary judgment. Anderson v. Liberty Lobby, Inc.,477 U.S. 242, 248 (1986). Summary Judgment is not proper if the evidence is such that a reasonable jury could return a verdict for the non moving party. Id.

A moving party always bears the burden of informing the Court of the basis of its motion. Celotex Corp. 477 U.S. at 323. Once the moving party discharge this burden,

the nonmoving party must set forth specific facts demonstrating that there is a dispute as to a genuine factual dispute." Fed. R. Civ. P. 56(e); Anderson, 477 U.S. at 247. The nonmoving party may not rest upon mere allegations or denials of his pleading. Id. at 256.

In passing on a motion for summary judgment, the Court must view the facts in the light most favorable to the nonmoving party, and all justifiable inferences are to be drawn in his favor. Id. at 255. The Court's function is not to weigh the evidence but to determine whether there is a genuine issue issue for trial. Id. at 249.

Plaintiff filed a three count pro se complaint alledging claims under 42 U.S.C.A. § 1983; 42 U.S.C.A. § 1985(2); and 42 U.S.C.A. § 1986. Defendants are Thomas Westhoff(hereinafter Westhoff) whom Plaintiff has failed to identify in his "First Amended

Petition" but who is idenfied in his motion to dismiss as a conservation agent and who issued Snelling a summons for second degree trespass; David Dowling(hereinafter Dowling); the prosecutor in the trespass case; Charles Cobb; a witness in the case;Lester Smith; Carl Porter; and James Calloway; the landowner. Only Westhoff and Dowling are punlic officers.

A pro se complaint is liberally construed. Haines v. Kerner, 404 U.S. 519 (9172). A well pleaded complaint must contain somithing more than mere conclusory statements that are unsupported by specific facts. Kaytor v. Fields, 661 F. 2d 1177, 1183 (8th Cir. 1981). Even pro se complaint must contain specific factual allegations rather than conclusory statements that state a civil rights claim. Id.; Nickens v. King 490 F. 2d 1270, 1271 (8th Cir. 1974). Read liberally, the complaint's

factual allegations against Westhoff, the conservation officer, are (1) that he issue a summons against Plaintiff for second degree trespass when no landownerhad filed a complaint; (2) that he coerceda landowner to sign a complaint; and (3) that he detained Plaintiff for more than forty-five minutes and checked his hunting license, deer tag, identification, and gun without reading him his rights. (Claim I) He alleges Westhoff violated his rights under the First amendment, Fifth Amendment, and Fourteenth amendment and 42 U.S.C.A. § 1983. None of Plaintiff's allegations rise to Federal Constitutional dignity. Ellingburg, 490 F. 2d at 1271. Futhermore, Westhoff's actions as discribed in the "First Amended Petition" appears to be within the scope of his official duty as a conservation agent. See § 252.060 R.S. Mo. 1986; § 252.085 V.A.M.S. Supp.

1991.

In claim II and III of his complaint, Plaintiff alleges conspiracy pursuant to 42 U.S.C. § 1985(2) to violate his rights under the eight and fourteenth amendments. Plaintiff's conspiracy allegations are couched in conclusory language and speclative allegations and fail to state what rights have been infringed. He lists constitutional amendm,ents at verious places in the "First Amended Petition" but he does not tie those to specific deprivation of his rights. He alleges Defendant Westhoff conspired with Defendant Calloway "when defendant Westhoff employed defendant Calloway to assist with the back dated complaint." Claim II) Plaintiff alleges that West and Edward Cobb agreed with Dowling " to give conflicting testimony under oath at a deposition on May 29,

1990, in the jury room of the Mongtgomery County Courthouse, State of Missouri with the intent and purpose to Hinder and defeat the due course (sic) of justice and to deny Plaintiff the equal protection of the Laws. That defendants Westhoff and Cobb, under the instructions of defendant Dowling, Westhoff and Cobb would change their statements at the trial stage to insure that if Plaintif had a defense against what had beensaid, it would be useless and no fair trial could be had."

The complaint appears to identify Westhoff, Cobb and Calloway as witnesses at his criminal trial. As such they are entitled to witness immunity from civil actions. Conley v. office of the Public Defender, 653 F. 2d 1241 (8th Cir. 1981); Myers v. Bull, 599 F. 2d 863 (8th Cir. (1979), cert. denied, 444 U.S. 901 (1979).

Plaintiff's only allegation against

Defendants Smith and Porter is as follows:

That Defendant, David K. Dowling went a step further to insure that Plaintiff were denied a fair Trial and Due Process, because Plaintiff insisted on attending and recieving a Trial, that under the instructions of Mr. Dowling, Lester Eugene Smith and Carl Portter agree to disobey a Subpeona(sic) to Appear as witnesses in Cause #CV189-67MX, State of Missouri v. Lonnie D. Snelling, that Defendants Smith and Portter disobedience of such Subpeona (sic) falls within Mo. R.S. 1986, Section 545.340, Defendants absent were directed by Defendant David K. Dowling for the purpose of impeding and obstructing Justice, with the intent to deny Plaintiff Due Process and the Equal Protection of the Laws.

Plaintiff indicates that the prosecutor Dowling directed and instructed Smith

and Porter that they did not have to appear. otherwise, he generally aleges a conspiracy. " A general allegation of conspiracy, is only an allegation of a legal conclusion and is insufficient to constitute a cause of action." McLeneghan v. Union Stock Yards, 298 F. 2d 659, 663 (8th Cir. 1962). Plaintiff's allegations of conspiracy as a whole are so conclusory and devoid of factual basis as to warrant dismissal based on Fed. R. Civ. P. 12(b)(6). Furthermore, Defendant Dowling, a prosecutor in the criminal case, is entitled to absolute immunity from private civil rights actions. See Imbler v. Pachtman, 424 U.S. 409 (1976).

Plaintiff does not indicate how he was injured. at best, he speculates that "if Plaintiff had a defense against ... [deposition] ...testimony, it would be useless and no fair trial could be had"

because witnesses changed their story at trial or did not appear at trial.

The docket sheets from the State criminal case were submitted by several of the Defendants as attachments to their motion. Those docket sheets indicate that on June 6, 1990, in the case of State v. Snelling, CR189-67M, a jury found Snelling guilty of second degree trespass. A $150 fine was assessed. On June 25, 1990, Snelling filed a motion for mistrial or in the alternative a new trial with the trial court. In that motion Snelling raised allegations of misconduct by prosecutor Dowling including Dowling's relationship with Cobb, his "influence over the witnesses " and their absence from trial, and Dowling's directing witness how to answer questions. Snelling's motion for a new trial was denied on September 4, 1990. The last entries on the docket sheets

show that notice of appeal was filed with the Missouri Court of Appeals on October 1, 1990, and the Missouri Court of Appeals acknowledged receipt of appeal on October 5, 1990. That appeal is currently pending.

Moreover, the record disclosed no reason why vindication of Plaintiff's rights with respect to his trespass charge now on appeal cannot be had in the State Courts of Missouri. As so many of the issues in the State appeal are likely to overlap, this Court would have abstained from hearing Snelling's allegations while the appeal was peading even had he properly pleaded claims under § 1983 and § 1985. See White v, Walsh, 613 F. Supp. 325, 328 (E.D. Mo. 1985); Johnson v. McNary, 414 F. Supp. 684, 688 (E.D.Mo. 1975).

Accordingly,

It is Hereby Ordered that Defendants Thomas Westhoff, David Dowling, Charles

Cobb, Lester Smith, Carl Porter, and James Calloway shall have judgment against Plaintiff Lonnie Snelling and Plaintiff's complaint is Dismissed.

Dated this 25th day of March, 1991.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LONNIE D. SNELLING,)
Plaintiff)
v.) No. 90-1908-C7
THOMAS A. WESTHOFF,)
et al.,)
Defendants.)

ORDER

This matter is before the Court on Plaintiff's motion for leave of court to amend petition or in the alternative. motion to alter or amend judgment; Plaintiff's motion for leave to submit proposed amended petition after court enters its rulings; Defendant Dowling's motion for sanctions against plaintiff; Defendant Westhoff's motion for sanctions; Plaintiff's motion for order compelling discovery; Plaintiff;s motion for oral

argument; and Plaintiff's motion for ruling on pending motions.

On March 25, 1991, this Court dismissed Plaintiff's claim for relief. Plaintiff filed a motion for leave to amend petition or in the alternative a motion to alter or amend judgment. Plaintiff did not attach a proposed amended complaint, although he did file a separate motion for leave to submit proposed amended petition after the Court enters its rulings. to this date Plaintiff failed to demonstrate by Memorandum or by filing a proposed amended complaint that amendment would correct the defects of his dismissed complaint. Accordingly,

IT IS HEREBY ORDERED Plaintiff's motion filed April 1, 1991, for leave of Court to amend petition or in the alternative motion to alter or amend judgment is DENIED.

IT IS FURTHER ORDERED Plaintiff's motion filed April 1, 1991 for leave to submit proposed amended petition after court enters its rulings is DENIED.

IT IS FURTHER ORDERED Defendant Dowling's motion for sanctions filed April 23, 1991, is DENIED.

IT IS FURTHER ORDERED Defendant Westhoiff's motion for sanctions filed April 25, 1991, is DENIED.

IT IS FURTHER ORDERED Plaintiff's motion for new trial filed July 5, 1991, is DENIED.

IT IS FURTHER ORDERED Plaintiff's motion to compel discovery filed July 18, 1991, is DENIED as moot.

IT IS FURTHER ORDERED Plaintiff's motion for oral hearing filed August 7, 1991, is DENIED as moot

IT IS FURTHER ORDERED Plaintiff;s motion for ruling on pending motions filed November 4, 1991, is DENIED as moot.

Dated this 10th day of December, 1991.

UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 92-1067EMSL

Lonnie D. Snelling,	)Order Denying
Appellant.	)Petition for
vs.	)Rehearing and
Thomas A. Westhoff,	)Suggestion for
et al.,	)Rehearing
Appellees	)En banc

The suggestion for rehearing en banc is denied. The petition for rehearing is also denied.

September 9, 1992

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals Eighth Circuit

CONSTITUTION AMENDMENT [1]

Congress shall make no Law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridge the freedom of speech, or of the press; or the right of peaceably to assemble, and to petition the government for redress of grievances.

CONSTITUTION AMENDMENT [5]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in case arising in the land or naval forces, or in the militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty

or property, without due process of law; nor shall private property be taken for public use, without just compensation.

CONSTITUTION AMENDMENT [VIII]

Excessive bail, fines, punishments

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

CONSTITUTION AMENDMENT [XIV]

Section [1] All person born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside, no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

BEST AVAILABLE COPY

42 U.S.C.A. Section 1983

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected any citizen of the United States of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C.A. Section 1985(2)

Conspiracy to interfere with civil rights(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his his person or property on account of his having so attended of testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstruct-

ing, or defeating, in any manner. the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

42 U.S.C.A. Section 1986

Action for neglegt to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be commited, shall be liable to the party injured, or his legal

representatives, for all damages caused by such wrongful act, which such person by resonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guity of such wrongful neglect or refusal may be joined as defendants in the action; and if death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

Mo. R.S. 1986, Section 545.340

Disobedience to subpeona, how punished

Disobedience to any such subpeona shall be punished in the same manner and upon like proceedings as provided by law in civil cases; and every delinquent witness shall be liable to the party at whose instance he was summoned, in the same manner and to the same extent as in cases witnesses summoned in a civil suit.

(2)

No. 92-826

Supreme Court, U.S.
FILED
DEC 14 1992
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

LONNIE D. SNELLING, Petitioner

v.

THOMAS A. WESTHOFF, DAVID K. DOWLING, CHARLES EDWARD COBB, LESTER EUGENE SMITH, CARL PORTER AND JAMES P. CALLOWAY, Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RESPONDENT THOMAS A. WESTHOFF'S BRIEF IN OPPOSITION

JANE A. SMITH
General Counsel
Missouri Dept. of Conservation
Missouri Bar No. 28681
P. O. Box 180
Jefferson City, MO 65102-0180
314/751-4115
Attorney for Respondent Thomas A. Westhoff

BEST AVAILABLE COPY

QUESTIONS PRESENTED

1. Whether a case may be dismissed when the complaint contains no factual allegations.

2. Whether petitioner has standing to request the review of issues which were addressed neither in the decision below nor in the record.

3. Whether petitioner has standing to request a review when he has not complied with the rules of this Court.

PARTIES TO THE PROCEEDING

The parties to the proceeding in the Eighth Circuit are those named in the caption.

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No. 92-826

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

LONNIE D. SNELLING, Petitioner,

v.

THOMAS A. WESTHOFF, DAVID K. DOWLING, CHARLES EDWARD COBB, LESTER EUGENE SMITH, CARL PORTER AND JAMES P. CALLOWAY, Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RESPONDENT THOMAS A. WESTHOFF'S BRIEF IN OPPOSITION

Respondent Westhoff herein respectfully opposes a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered regarding this action on September 25, 1992.

OPINIONS BELOW

The decision of the district court granting summary judgment to the respondents was not reported. (Pet. 8a-19a) The decision of the court of appeals, affirming the district court and denying the suggestion for rehearing en banc the petition for rehearing, is reported at 972 F.2d 199 (8th Cir. 1992) (Pet. 2a-7a).

BASIS FOR JURISDICTION

The opinion of the United States Court of Appeals for the Eighth Circuit was decided on August 3, 1992. The suggestion for rehearing en banc and petition for rehearing were denied on September 9, 1992. This Court has jurisdiction to review the court of appeals pursuant to 28 U.S.C. § 1254 (1).

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

United States Constitution, Amendment I:

> Congress shall make no law...abridging the freedom of speech, or...the right of the people peaceably to assemble.

United States Constitution, Amendment V:

> No person shall... be compelled in any criminal case to be a witness against himself.

United States Constitution, Amendment XIV:

> ...nor shall any state...deny to any person within its jurisdiction the equal protection of the laws.

Civil Rights Act of 1871, 42 U.S.C. § 1983:

> Every person who, under color of any statute...of any State...subjects, or

causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law...

Civil Rights Act of 1861, 42 U.S.C. § 1985 (2):

...if two or more persons conspire for the purpose of impeding, hindering, obstructing or defeating, in any manner, the due course of justice in any state...with intent to deny to any citizen the equal protection of the laws...(3) the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation against any one or more of the conspirators.

Civil Rights Act of 1871, 42 U.S.C. § 1986:

> Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses to do so, if such wrongful act be committed, shall be liable to the party injured...for all damages caused by such wrongful act.

COUNTERSTATEMENT OF THE CASE

This suit was instituted in the United States District Court for the Eastern District of Missouri against several individuals with plaintiff complaining that defendants violated his constitutional and civil rights during an

issuance of a state trespass complaint and the ensuing state prosecution of the complaint. The Plaintiff sued defendant Westhoff, the law enforcement officer who issued the trespass complaint; defendant Dowling, the county prosecutor; defendant Calloway, the owner of the real property where the trespass occurred; defendant Cobb, a witness for the prosecution at the trial for the trespass violation; and defendants Smith and Porter, residents of the area where the violation occurred. The essential claims against defendant Westhoff were that he issued the summons without cause, that he detained plaintiff without cause, and that he conspired with other defendants to deny plaintiff a fair trial. Plaintiff's claim is that defendant Westhoff violated his rights under the First, Fifth and Fourteenth Amendments and under 42 U.S.C. section

1983 and an alleged subsection (c) of 42 U.S.C. section 1985. Plaintiff demands money damages from the defendants personally, totaling over five million dollars.

Defendant Westhoff moved to dismiss on grounds of official immunity. The District Court dismissed defendant Westhoff on grounds of official and witness immunity. All other defendants were also dismissed on various grounds of immunity. Defendant Westhoff filed a motion for sanctions against plaintiff for the purpose of halting plaintiff's frivolous filings regarding law enforcement officials, particularly state conservation agents. The district court denied the motion.

Plaintiff appealed and defendant Westhoff cross-appealed. The Court of Appeals for the Eighth Circuit affirmed

the decisions of the Eighth Circuit. *Snelling v. Westhoff, et al.*, 972 F.2d 199 (8th Cir. 1992). Defendant Westhoff is not petitioning for the review of that cross-appeal. This Brief in Opposition is filed on behalf of Defendant Westhoff, who was acting in his official capacity as a state conservation agent and/or as a prosecution witness during the times in which he performed the acts upon which alleged liability is based.

5

REASONS FOR DENYING THE WRIT

I. THERE IS NO CONFLICT WITH THE DECISIONS OF THIS COURT.

Petitioner claims that the decision below is in conflict with *Bowers v. Hardwick*, 478 U.S. 186, 193. *Bowers, supra*, held that not every civil rights claim filed should be manipulated by a court so as to provide a petitioner a

cause of action under the First, Fifth and Fourteenth Amendments. The Eighth Circuit, following *Bowers, supra*, held that petitioner failed to state a claim for which relief could be granted under the previously referenced amendments.

The decision below also adhered to the findings of *Briscoe v. LaHue*, 460 U.S. 325, 327, which held that a convicted state defendant, such as petitioner, cannot bring a section 1983 action asserting perjury against a law enforcement official, which was the status held by defendant Westhoff.

In his Argument (Pet. 7), plaintiff alleges the decision of the Eighth Circuit upholding the summary judgment was in conflict with *Adickes v. S.H. Kress and Company*, 398 U.S. 144, 158. The lower court held in accordance with *Adickes*,

supra, that defendants had met the burden of showing the absence of any issues regarding any material fact.

The decision below is in compliance with the decisions of this Court.

II. NEITHER THE DECISION BELOW NOR THE RECORD RAISES THE QUESTION OF WHETHER PLAINTIFF'S PETITION WAS DETERMINED TO BE A CHALLENGE TO HIS CRIMINAL CONVICTION.

Plaintiff requests in his Question (4) of his petition (Pet. i) a determination as to whether his complaint was labeled as a challenge to his criminal conviction. The Eighth Circuit did not decide that question in this proceeding since that issue was not presented by plaintiff. Moreover, the record will not support a determination of that issue by this Court.

It is difficult for defendant Westhoff to understand the substance of petitioner's Question (4). (Pet. i)

Plaintiff appears to be attempting to assert that since the lower decision utilized the theory of witness immunity that somehow the lower court was unable to separate the issues in plaintiff's complaint from his criminal conviction.

Petitioner states the decision below held that his complaint was a challenge to his criminal conviction and that the holding conflicts with *Bowers v. Hardwick*, 478 U.S. 186. The Eighth Circuit did not interpret petitioner's cause of action as a challenge to his criminal conviction. Further, the findings of *Bowers, supra*, which plaintiff cited did not relate to any criminal conviction.

The Eighth Circuit determined that defendant Westhoff possessed absolute witness immunity from plaintiff's claims of conspiracy and that plaintiff failed to

state a claim under section 1983 against defendant Westhoff.

The record of lower decision gives no indication that the Eighth Circuit perceived plaintiff's petition as a criminal complaint. Further, plaintiff did not present this issue to the lower court. Since the issue was not previously presented, this Court should not grant review. *United States v. Williams*, 112 S.Ct. 1735, 1738.

III. NEITHER THE DECISION BELOW NOR THE RECORD RAISES THE QUESTION OF LIABILITY UNDER 42 U.S.C. 1985(3)

Plaintiff states that the lower court decision conflicts with this Court's opinions regarding 42 U.S.C. 1985(a)(c)(sic) (Pet. 6).

Defendant Westhoff is unaware of any subsections under section 1985, titled "a" or "c". Plaintiff cited *Griffin v. Breckenridge*, 403 U.S. 88 for his

position. *Griffin, supra*, at 104 addresses the issue of liability under section 1985(3).

Plaintiff never alleged any violation of section 1985(3), therefore, the Court cannot consider any issue regarding section 1985(3) for review.

IV. NEITHER THE DECISION BELOW NOR THE RECORD RAISES THE ARGUMENT OF WHETHER DEFENDANT WESTHOFF HAD ENTERED INTO A CONSPIRACY WITH ALL DEFENDANTS

Plaintiff, in the argument portion of his petition (Pet. 11), states that defendant Westhoff had conspired with all the defendants. Plaintiff had never presented this issue to the courts below. Plaintiff had alleged that defendant Westhoff had conspired with two of the defendants, but plaintiff had never alleged a conspiracy which involved all the defendants.

Defendant Westhoff requests that the court not review an issue which had not been presented below. Plaintiff has also not presented the question of conspiracy involving all the defendants. When an issue is mentioned only in an argument but not as a question by the plaintiff, the issue is not properly before this Court. *Mazur v. Stein*, 347 U.S. 201, 206 n.5.

V. PLAINTIFF FAILED TO COMPLY WITH THE RULES OF THE COURT.

a) *Plaintiff did not serve respondent Westhoff by first-class mail.*

Plaintiff did not comply with Rule 29.3 which requires that any pleading, if service is by mail, must be mailed with first-class postage prepaid.

Plaintiff stated that he mailed his petition to defendant Westhoff on November 7, 1992, with first-class postage prepaid. Plaintiff did not mail the petition until November 9, 1992, and then mailed it with

fourth-class postage. (App. 2A-3A) Defendant Westhoff did not receive plaintiff's briefs until November 16, 1992.

The failure of plaintiff to comply with the Court's rules was not inadvertent, but is an example of plaintiff's standard practice. On five separate filings in the courts below, the date on plaintiff's certificate of service differed from the postmark.

b) *Plaintiff did not serve all defendants.*

Plaintiff did not further comply with Rule 29.3 as he did not serve respondent James P. Calloway. Rule 29.3 requires that each party or, if the party is represented, then the party's counsel be served with any pleading. Plaintiff's proof of service (App. 4A-5A) does not indicate any service to defendant Calloway

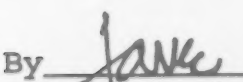
though the plaintiff declares that he has served each party to the proceeding.

The Court is requested to deny plaintiff's writ due to his unwillingness or inability to conform to the rules of this Court.

VI. CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

By 

Jane A. Smith, General Counsel
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P. O. Box 180
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314/751-4115
Attorney for Respondent Thomas A. Westhoff

APPENDIX

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Envelope By Which Defendant Was Served 2A-3A

Plaintiff's Proof of Service . . . 4A-5A

LONNIE SNELLING
1519 - 79th St
N. City, Mo. 63130

SPECIAL
4th CL. RATE

RECEIVED
NOV 16 1992
LEGAL SECTION

Jane A. Smith
General Counsel
P.O. Box 180
Jefferson City, Mo.
65102

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1992

NO _____

LONNIE D. SNELLING
PETITIONER.

---

vs.

THOMAS A. WESTHOFF,
DAVID K. DOWLING,
CHARLES EDWARD COBB,
LESTER EUGENE SMITH,
CARL PORTER, AND
JAMES P. CALLOWAY,
RESPONDENTS.

PROOF OF SERVICE

I Lonnie D. Snelling, do swear or declare that on this date, November 7, 1992, pursuant to Supreme Court Rule 29.3 and 29.4, I have served the attached PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding, or that party's counsel, and on every other person required to be served by depositing an envelope containing the above documents in

the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows: Walter D. McQuie, Jr., Box 85, 227 N. Sturgeon Street, Montgomery City, Missouri 63361. Counsel for Lester Smith and Carl Porter. David H. Wendt, 7911 Forsyth, Suite 650, St. Louis, Missouri, 63105, Counsel for David K. Dowling. Jane A. Smith, P. O. Box 180, Jefferson City, Missouri, Counsel for Thomas A. Westhoff.

and

Nathan S. Cohen, 818 Olive Street, Suite 1135, St. Louis, Missouri 63101, Counsel for Charles Edward Cobb.

_____

Lonnie D. Snelling

SUBSCRIBED AND SWORN TO BEFORE ME THIS 7th day of November, 1992.

_____

Notary Public in and for the County and State